

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.5139 OF 1993

WITH

SPECIAL CIVIL APPLICATION NO.2816 OF 1988

For Approval and Signature

The Hon'ble Mr. Justice S.K. KESHOTE

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not ?
3. Whether their lordships wish to see the fair copy of the judgment ?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
5. Whether it is to be circulated to the Civil Judge?

DHIRAJLAL M BHARTI

VERSUS

THE MUNICIPAL COMMISSIONER, AHD. MUN. CORPN. & ORS.

Appearance:

Shri D.M. Bharti, petitioner present in person
None present for respondents

Coram: S.K. Keshote, J

Date of decision: 3.3.97

C.A.V. JUDGMENT

Heard the petitioner at length and perused the Special Civil Applications.

2. In both these Special Civil Applications, the substantial grievances made by the petitioner are identical. In fact, the second petition filed by the petitioner was uncalled for. However, after filing the second petition, the first petition in substance does not survive. The petitioner also does not dispute this position.

3. The case of the petitioner has a checkered history and it is necessary to give out the facts of the case in detail. The petitioner was appointed on 26th June 1955, on recommendations of the Selection Committee as a Tracer in the Estate Department of the Municipal Corporation of the city of Ahmedabad. The Government appointed a Town Planning (TP) Officer under the provisions of the Bombay Town Planning Act, 1954. The TP Officer had to be provided with an establishment and therefore an arrangement was entered into between the Corporation on one hand and the TP Officer, State of Gujarat, on the other, and a policy of appointing the staff of the Corporation to the establishment of the Arbitrator (TP Officer) was chalked out. According to the said policy, the Arbitrator had to select and suggest the employment of right type of person from the office of the Corporation to his office. The TP Officer demanded services of the petitioner as a Tracer in his office and accordingly, the petitioner was deputed as a Tracer, on 19.2.57, in the establishment of TP Officer. The post of Junior Draftsman in the establishment of TP Officer fell vacant as the holder thereof, Mr. Gandhi, resigned. The Arbitrator recommended the name of petitioner for the said post vide letter dated 25th March 1960, and the Municipal Corporation, under its order dated 21st April 1960 appointed the petitioner as Junior Draftsmen in the establishment of Arbitrator. This appointment was acting one. On 5th December 1962, the petitioner was placed under suspension by the Corporation and later on he was removed from the services after obtaining approval of the Industrial Tribunal by filing Approval Application No. (IT) 30 of 1964. While granting approval for the removal of petitioner from services, the industrial Court has made certain observations suggesting that the petitioner be reappointed in the Corporation's services. The decision of the Industrial Court granting approval for removal of petitioner was challenged by filing a writ petition before this Court and the said order of the Industrial Court granting approval was set aside and the

proceedings were remanded to the Industrial Court. During the pendency of writ petition in this Court and in pursuance of suggestions made by the Industrial Court, under the order dated 14th June 1965, the petitioner was informed that he should join the services within a week of receipt thereof and then represent his case for seniority if he so desire. It has further been informed to the petitioner that for failure to join within the stipulated period, the offer of reappointment will be treated as cancelled. The petitioner has joined the post of Junior Draftsman on reappointment. The petitioner was thereafter relieved from services on 1st October 1967 because of retrenchment. In pursuance of the order of this Court in the writ petition aforesaid, the Industrial Court reheard the matter and did not grant its approval for removal of the petitioner and dismissed the application of the Corporation for approval. Consequent thereupon, on 3rd March 1971, the Municipal Commissioner passed the order cancelling the order dated 13th May 1964 of removal of the petitioner from services and reappointing the petitioner in the Town Planning establishment as a Junior Draftsman. Later on, the post of TP Officer was abolished and the Government decided to appoint its own staff in the establishment and therefore, the petitioner was served with an order dated 30th September 1976, passed by Deputy Municipal Commissioner (General), wherein it was stated that the staff of the Municipal Corporation working in the Town Planning establishment had to be absorbed in the municipal service and therefore the petitioner who was serving as Junior Draftsman in the aforesaid establishment was appointed as a Tracer in place of Shri Chandulal L. Chauhan in Town Planning establishment of the Corporation. Being aggrieved of the aforesaid order, the petitioner filed an appeal before the Standing Committee of the Corporation which came to be dismissed vide order dated 15th March 1977 on the ground that in the Department of the Corporation direct recruits were working as Junior Draftsman and therefore there was no post of Junior Draftsman vacant in the Corporation and as such the petitioner has been repatriated to the Municipal service as a Tracer from 1st October 1976. The petitioner has challenged the two orders, namely, the order of the Deputy Commissioner dated 30th September 1976 and the order dated 15th March 1977 of the Standing Committee, rejecting the appeal of the petitioner by filing Special Civil Application, being Special Civil Application No.608 of 1977 before this Court. The Special Civil Application has been decided by this Court on 15th February 1978 and the same has been dismissed. This Court has considered it to be a case of deputation of the petitioner to the TP

establishment and as the Government took a decision to have its own staff on the TP establishment, the arrangement between the Arbitrator and Corporation came to an end and as such the petitioner has rightly been repatriated to the Corporation and he has been taken back on the post of Tracer, the post which he was holding at the relevant time in the Corporation.

4. Against the aforesaid decision, the petitioner filed Letters Patent Appeal No.97 of 1978 before this Court against the order of the learned Single Judge, dated 15.2.78, passed in Special Civil Application No.608 of 1977. The said LPA has also been dismissed by the Division Bench of this Court on 24.4.78. The petitioner then approached to the Hon'ble Supreme Court by filing the Application for special leave to appeal. Though at the time when this earlier writ petition filed CA was pending before the Hon'ble Supreme Court, but it is no more in dispute that the said appeal filed by the petitioner before the Hon'ble Supreme Court came to be dismissed on 19th September 1990. This fact has been mentioned by the petitioner himself in para 6 of Special Civil Application No.5139 of 1993. The order passed by the Hon'ble Supreme Court in the said Civil Appeal No.1213 of 1979 on 19th September 1990 has been reproduced by the petitioner in para 11 of Special Civil Application No.5139 of 1993. In the Special Civil Application No.2816 of 1988, the petitioner has prayed for reliefs as under:

- a) To direct the opponents to make the part payment of Rs.50,000 (Rupees fifty thousands) or amount which the Hon'ble Court may decide, with interest of 18% from the date of the said amounts due to the date of the receipt of the said amount.
- b) To direct the opponents to make the payment of abovesaid amounts before 24.6.1988 the date of marriage.
- c) To allow this petition throughout the cost.
- d) To give other appropriate relief which the Hon'ble Court may think fit.

5. The petitioner produced some more documents on record of these petitions. The letter dated 20th September 1984 of the Ahmedabad Municipal Corporation is relevant which has been sent to the petitioner under the

caption, "unauthorized absence from 1st October 1976". The petitioner was stated to be remaining absent from duty since 1.10.76. He was called upon to show cause as to why disciplinary action should not be taken against him for the same. The petitioner submitted a reply to the show cause notice vide his reply dated 12th October 1984, wherein he stated that the question of unauthorized absence from 1.10.76 does not arise as the period of 1.10.76 to 3.12.76 has been treated as duty and leave period vide order of the Labour Court No.5 at Ahmedabad in Recovery Application No.141 of 1983, dated 16th February 1984. The petitioner has not produced on record of this case, the copy of the Labour Court's order made in the Recovery Application No.141 of 1983. However, in the reply to the show cause notice, the petitioner has given out the extract of the said order. The petitioner made reference to the Recovery Application No.1340 of 1978 which has been decided by the Labour Court No.6 at Ahmedabad on 12th May 1982. The petitioner has also not produced copy of this order on record of these proceedings. However, the relevant portion of the order of the Labour Court No.6 at Ahmedabad, has been reproduced in the reply to the said show cause notice. From the reply to the show cause notice, it further transpires that the petitioner filed Special Civil Application No.2642 of 1982 before this Court for enforcement of the order of Labour Court passed in Recovery Application No.1340 of 1978. That petition came to be disposed of on 12th July 1982 and the amount as computed by the Labour Court No.6 in the Recovery Application No.1340 of 1978 has been paid to the petitioner. In the reply to the show cause notice, the petitioner has also given out that after the decision of this Court in Special Civil Application No.2642 of 1982 dated 12th July 1982, he tried to resume his duties as Junior Draftsman in the Corporation but he was not allowed to join. The Assistant Commissioner of the Corporation, Shri A.N. Vyas orally told the petitioner that as his matter is pending before the Hon'ble Supreme Court for final disposal, he cannot be allowed to resume duties till the matter is finally decided. The petitioner has come up with the case in reply to the show cause notice that from 1.10.76 to 3.12.76 and onwards, he continued on the post of Junior Draftsman because thereafter, no order has been passed by any competent authority to discontinue his services as a Junior Draftsman. It is also stated by the petitioner in the said reply that after 12th July 1982, it was the duty of the competent authority of the Corporation to make a fresh and specific order that in which Department the petitioner has to resume his duties and on what post. In

absence of the said order, the petitioner stated that he continued on the post of Junior Draftsman and therefore no question arises of remaining absent from duties since 1.10.76 and also no question arises to take disciplinary action against him. In para 6 of the reply to show cause notice, the petitioner stated that he is prepared to join and to serve on appropriate post in the Corporation if the Corporation is also prepared to give him appropriate post like Senior Draftsman, Inspector, Labour Officer, Assistant Labour Officer etc. because he is qualified and experienced person for the above said post and on some of the said posts, the persons junior to him are working. Then there is another letter of the Corporation on record, dated -- June 1985. This letter has been sent to the petitioner in response to his letter dated 12th June 1985. From this letter of the Corporation it is clear that the petitioner has not joined the services of the Corporation. The petitioner admits during the course of argument that he started practicing as an advocate from the month of March 1985. The petitioner sought permission from the Corporation to start his practice as an advocate vide letter dated 18th February 1985, which is revealed from this letter of the Corporation. The petitioner further admits that otherwise also, he attained the age of superannuation on 30th December 1987. The petitioner sent a notice to the Corporation dated 29th March 1988 under the caption, "to make payment of provident fund and gratuity". In para 4 of the said notice, the petitioner stated that in the year 1976 he was illegally reverted on the post of Tracer from the post of Junior Draftsman and the matter is sub-judice before the Hon'ble Supreme Court. It has further been stated that he had requested many times to the Corporation to give him appropriate job in the Municipal Corporation but the Corporation had not given any attention upon all his requests and not given him job in the Corporation and as such, ultimately he started practice as an advocate in the year 1985, in the Court of law after informing the Corporation. Under this notice, the petitioner also claimed the retirementary benefits. Certain further correspondent rested between the petitioner and the Corporation. After decision in the Civil Appeal No.1213 of 1979, the petitioner demanded, by notice dated 31st January 1992, the retirementary benefits.

6. After going through the Special Civil Applications and the documents filed by the petitioner, I do not find any evidence on record from the petitioner's side that he has at any point of time joined the post of Tracer. In fact, the petitioner has not joined the post

of Tracer in the Corporation on his reversion from the post of Junior Draftsman. The petitioner has challenged the order of the Corporation reverting him from the post of Junior Draftsman to the post of Tracer, but it is a fact that he lost in that matter up to the Hon'ble Supreme Court. The petitioner has made it to be a prestige issue and he has not joined on the post of Tracer. The petitioner was an employee of the Corporation and irrespective of the fact whether the order of reversion was valid or not, it was incumbent upon him to comply with the order. Non compliance of the order of the superior officer is insubordination and it is a serious misconduct. It is not the case of the petitioner that at any point of time, this Court in the Special Civil Application or in the Letters Patent Appeal and the Hon'ble Supreme Court in the Special Leave Petition or the Civil Appeal, have stayed the operation of the order of the reversion of the petitioner. From the very day of the order of reversion, the petitioner stopped to work in the Corporation and it is a clear case of not only disobedience of lawful orders, but wilful and deliberate absence from the service. The Corporation has given notice to the petitioner dated 20th September 1984 calling him to show cause why disciplinary action should not be taken against him for wilful absence from duty since 1.10.76. It is true that the Corporation has not given any chargesheet and taken any disciplinary action against the petitioner but it is equally true that the petitioner remained absent from duty since 1.10.76 and at no point of time he had joined the said post. From the documents, i.e. reply to the show cause notice dated 20th September 1984, the intention of the petitioner is clearly borne out that he was not interested to join the post of Tracer and he wanted to join on the post of Senior Draftsman, Inspector, Labour Officer, etc. because of his qualifications and experience. In the notice which has been given by the petitioner after reaching the age of superannuation, the petitioner has claimed retirementary benefits. The petitioner has already started practice as an advocate in the month of March 1985. Though the petitioner personally made detailed submissions, he is unable to show and establish that at any point of time, he has complied with the order of the Corporation and he resumed the duties on the post of Tracer in the Corporation. It is a case where the petitioner remained unauthorisedly absent from duties without any justification or cause whatsoever and now on the basis of a technical plea that no chargesheet was given to him and that no departmental inquiry has been initiated, he wants to take all the retirementary benefits. It is true that disciplinary action was not

taken against the petitioner, but it is equally true that the petitioner remained unauthorisedly absent from duty from 1st October 1976. Much emphasis has been laid by the petitioner on the fact that for the period from 1st October 1976 to 3rd December 1976, the Labour Court has ordered for payment of wages, but that will not in any way help the petitioner in substance. The order of the Labour Court has not been produced by the petitioner on record, but from certain portion of the order reproduced by the petitioner in the reply to show cause notice, it comes out that the period from 4.10.76 to 3.12.76 was treated to be leave period, and wages for the said period was ordered to be made. So at the most it may be accepted that the petitioner remained on leave upto 3rd December 1976, but from 4th December 1976, he remained absent unauthorisedly. It is not the case of the petitioner that he made application for leave. So even after excluding the aforesaid period, the absence of the petitioner for years together is certainly a serious thing and he cannot be given any premium for the same only on the technical ground that no disciplinary action has been taken against him. Prior to 1976, the petitioner had long service. It is also true that the Corporation has not taken any disciplinary action for the reasons best known to it. The minimum penalty for such misconduct would have been and should have been removal or dismissal from the services. The petitioner is not a layman. He understood all these things. The petitioner has taken law in his own hands and decided not to comply with the lawful orders of the Corporation. This conduct of the petitioner disentitle him from getting any relief from this Court under its extra ordinary powers. This Court will exercise extra ordinary powers under Article 226 of the Constitution of India, in favour of an employee who had acted fairly and reasonably and who is a disciplined person. This equitable jurisdiction is not meant for the employees who deliberately and without any justification, disobey the orders of the higher officers as well as remain absent unauthorisedly.

7. In the result, both these Special Civil Applications fail and the same are dismissed. The petitioner is directed to pay Rs.1,000/- by way of cost of each petition to the Corporation. Rule is discharged in both the petitions.

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(sunil)